

IGA/JPA File No.: 07-155  
AG Contract No.: P0012009004516  
Section: SR 303 L Drainage Improvements  
TRACS No.: H7392 01L (Relative to)  
Budget Source: N/A  
IGA FCD2007A005

When Recorded Return to:  
Flood Control FCDMC of Maricopa County  
2801 West Durango Street  
Phoenix, AZ 85009-6399

**INTERGOVERNMENTAL AGREEMENT**  
SR 303 L Drainage Improvements

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE FLOOD CONTROL DISTRICT OF MARICOPA COUNTY

Agenda Item C.69.10.056.3.00

THIS AGREEMENT is entered into March 15th, 2010, pursuant to Arizona Revised Statutes §11-951 through §11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "STATE") and the FLOOD CONTROL DISTRICT OF MARICOPA COUNTY (the "FCDMC"), acting by and through its BOARD OF DIRECTORS. The FCDMC and the STATE are collectively referred to as the "Parties".

**I. RECITALS**

1. The STATE is empowered by Arizona Revised Statutes §28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the STATE.

2. The FCDMC is empowered by Arizona Revised Statutes §48-3603, as revised, to enter into this Agreement and has by Resolution FCD 2005R017 authorized the undersigned to execute this Agreement on behalf of the FCDMC.

3. The FCDMC, in cooperation with the STATE and other partners, developed the Loop 303 Corridor/White Tanks Area Drainage Master Plan Update, hereinafter referred to as the "ADMPU". Additionally, in cooperation with the STATE and other partners, the FCDMC performed the Loop 303/White Tanks ADMPU Area Hydrologic Analysis, dated September 2009 (Contract Number 2007C031), to update ADMPU hydrology and resulting design parameters. The models resulting from this analysis, hereinafter referred to as the "MODELS", will be maintained by the FCDMC.

4. The intent of this Agreement is to outline the participation of each Party regarding the development and implementation of the design, rights-of-way acquisition, construction, construction management and operation and maintenance of separate elements of this drainage facility.

5. The proposed drainage system, hereinafter referred to as the "PROJECT", consists of approximately 19.5 miles of drainage conveyance facilities along the proposed SR 303L freeway alignment, from approximately Clearview Boulevard to the Gila River, as shown on Exhibit "A", attached hereto and made a part hereof. Major elements of the PROJECT are the regional channel and basins proposed to be constructed adjacent to the STATE's SR 303L freeway.

---

6. The proposed features for the PROJECT will be designed to provide the following benefits: a) reduced flooding hazards; b) regional 100-year flood protection including protection to SR 303L; c) on-site drainage for the SR 303L; d) a regional 100-year outfall to the Gila River; and e) potential multi-use recreational opportunities.

7. The design features of the PROJECT shall incorporate landscape aesthetics and allow for future multi-use recreation functions, consistent with policies and guidelines of either the STATE or the FCDMC.

8. The FCDMC's portion of the PROJECT, collectively herein referred to as the "OUTFALL", provides for the 100-year outfall to the Gila River including approximately 4.6 miles of drainage facilities from about 250 feet south of the centerline of Van Buren Street to the Gila River and one (1) basin site. The FCDMC's participation is equal to the approximate difference between the estimated costs of a 100-year regional drainage facility and the same facility designed for the 50-year storm event.

9. The STATE's portion of the PROJECT consists of approximately 15 miles of drainage channel and associated retention basins from Clearview Boulevard to about 250 feet south of Van Buren Street (the northern terminus of the OUTFALL), hereinafter referred to as the "STATE's PROJECT".

10. The participation established by this Agreement will not be changed to account for differentials in the actual costs realized by the FCDMC or the STATE when the PROJECT is completed.

11. The Parties may amend this Agreement to incorporate "First Flush" features into the OUTFALL as required by the STATE's needs relative to the PROJECT, at the STATE's sole expense.

**THEREFORE**, in consideration of the mutual covenants expressed herein, the STATE and the FCDMC enter into the following Agreement:

## **II. SCOPE OF WORK**

1. The FCDMC will:

a. Be responsible for funding, designing and constructing the OUTFALL, including allowance for the acceptance of additional flows from the Canyon Trails Channel at the diversion point, located approximately one-half mile north of Lower Buckeye Road.

b. Take the lead, with input from the STATE, for all aspects of the OUTFALL to include land acquisition, environmental permits, utility relocation, public involvement, design, landscape and aesthetics, construction and construction management. Land acquisitions, design and construction of the OUTFALL will be based on the right-of-way limits for the OUTFALL identified in Exhibit B, attached hereto and made a part hereof. Any refinements to the location of the OUTFALL that occur after approval of this Agreement must be agreed to in writing by both Parties.

c. Design the OUTFALL to accept the "Future Conditions with Projects in Place" flow and volume for the 100-year, 24-hour storm event, as defined by the results of the Loop 303/White Tanks ADMPU Area Hydrologic Analysis, dated September 2009. Any refinements to the design criteria that occur after execution of this Agreement must be agreed to in writing by both Parties.

d. Submit design plans and specifications to the STATE for review and comment, to be provided within 30 days of receipt of the submittal. Incorporate the STATE's comments as appropriate.

e. Review the STATE's design plans and specifications and provide comments to the STATE within 30 days of receipt of the submittal. Be responsible for any modifications to the STATE's PROJECT that are requested by the FCDMC after completion of final design of the STATE's PROJECT.

f. Be responsible for operation and maintenance of the OUTFALL as shown in Exhibit A. In Exhibit A, the OUTFALL is labeled as "Proposed Channel Constructed and Maintained by FCDMC" and "Proposed Basin Constructed and Maintained by FCDMC". In addition, be responsible for maintaining the MODELS, to reflect any changed conditions within the PROJECT area.

g. Complete construction of the OUTFALL by 2015, subject to available funding and timely coordination with the STATE regarding design parameters. Any refinements to the construction timeframe that occur after approval of this Agreement must be agreed to in writing by both Parties.

2. The STATE will:

a. Be responsible for funding, designing and constructing the STATE's PROJECT. In Exhibit A, the STATE's PROJECT is labeled as "Proposed Channel Constructed and Maintained by ADOT" and "Proposed Basin Constructed and Maintained by ADOT".

b. Take the lead, with input from the FCDMC, for all aspects of the STATE's PROJECT, including land acquisition, environmental permits, public involvement, utility relocation, design, landscape and aesthetics, construction and construction management. Any refinements to the location of the STATE's PROJECT that occur after execution of this Agreement must be agreed to in writing by both Parties.

c. Design the STATE's PROJECT to discharge the "Future Conditions with Projects in Place" flow and volume for the 100-year, 24-hour storm event at the point 250 feet south of the centerline of Van Buren Street, as defined by the results of the Loop 303/White Tanks ADMPU Area Hydrologic Analysis. Any refinements to the design criteria that occur after execution of this Agreement must be agreed to in writing by both Parties.

d. Review the FCDMC'S design plans and specifications and provide comments to the FCDMC within 30 days of receipt of the submittal. Be responsible for any modifications to the OUTFALL features that are requested by the STATE after completion of final design of the OUTFALL.

e. Submit design plans and specifications to the FCDMC for review and comment, to be provided within 30 days of receipt of the submittal. Incorporate the FCDMC's comments as appropriate.

f. Be responsible for operation and maintenance of the STATE's PROJECT. In addition, be responsible for any cleanup and repairs made necessary by stormwater or any other discharges to the OUTFALL from the STATE's PROJECT during the future upstream construction of the STATE's PROJECT and/or during ongoing maintenance of the regional channel by the STATE.

3. The FCDMC and the STATE will:

a. Jointly participate in stakeholder and public meetings related to the design and construction of the PROJECT.

b. Each be responsible for obtaining any permits necessary under any applicable Federal, state, tribal or local statutes, ordinance or regulations regarding stormwater discharged into their portion of the PROJECT for construction and continuing operations.

c. Have the right to participate in construction meetings and inspections.

d. In regard to stormwater discharged into the PROJECT, comply with all applicable and subsequent requirements of the U.S. Environmental Protection Agency Clean Water Act and regulations,

the Arizona Pollutant Discharge Elimination System (AZPDES) and any other applicable discharge requirements, including any permit requirements.

e. Maintain the right to review and comment on future changes or modifications to the STATE's PROJECT or OUTFALL that may affect hydraulic function.

### **III. MISCELLANEOUS PROVISIONS**

1. The terms, conditions and provisions of this Agreement shall remain in force and effect until completion of the PROJECT and all reimbursements; provided however, that any provisions herein for maintenance shall be perpetual unless a project partner is identified that will assume those responsibilities. It is understood and agreed to by the Parties; this Agreement may be amended or terminated, by mutual written agreement of the Parties.

2. This Agreement shall become effective upon signing and dating of the Determination Letter by the Attorney General.

3. Each Party to this Agreement (indemnitor) shall, to the extent permissible by law, indemnify, defend and save harmless the others (indemnitees) including agents, officers, directors, governors and employees thereof, from and against any loss or expense incurred as a result of any claim or suit of any nature whatsoever, which arises out of indemnitor's negligent or wrongful acts or omissions pursuant to this Agreement. Such indemnification obligation shall encompass any personal injury, death or property or environmental damages resulting from the indemnitor's negligent or wrongful acts or omissions, as well as reasonable attorney's fees, court costs, and other expenses relating to the defense against claims or litigation, incurred by the indemnitee.

4. In the event that either Party to this Agreement assigns responsibilities identified in this Agreement to another public or private entity, the assumption of those responsibilities by the new entity must be agreed to in writing by both Parties.

5. Any permits required for the PROJECT shall be issued upon approval by the appropriate Party to this Agreement at no cost to the PROJECT.

6. The Parties agree to retain all books, accounts, reports, files and other records relating to this Agreement and to make such available at all reasonable times for inspection and audit by the Parties to this Agreement, or their agents, during the term of and for a period in accordance with the State approved Retention Schedule or five years, whichever is longer, after completion of construction obligations outlined in this Agreement.

7. To the extent applicable under law, the provisions set forth in Arizona Revised Statutes §35-214 and §35-215 shall apply to this Agreement.

8. This Agreement is subject to cancellation by either Party pursuant to the provisions of Arizona Revised Statutes §38-511.

9. Neither Party to this Agreement will seek reimbursement for its own personnel and administrative costs associated with the PROJECT.

10. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".

11. Compliance requirements for Arizona Revised Statutes §41-4401—immigration laws and E-Verify requirement:

a. The Parties warrant compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Arizona Revised Statutes §23-214, Subsection A.

b. A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the contract, and the Parties may be subject to penalties up to and including termination of the Agreement.

c. Each Party retains the legal right to inspect the papers of any employee who works on the STATE's PROJECT or the OUTFALL to ensure that the each Party or their subcontractors are complying with the warranty under Paragraph III.10.a.

12. Pursuant to Arizona Revised Statutes §35-391.06 and §35-393.06, each Party certifies that it does not have a scrutinized business operation in Sudan or Iran. For the purpose of this Section the term "scrutinized business operations" shall have the meanings set forth in Arizona Revised Statutes §35-391 or §35-393, as applicable. If any Party determines that another Party submitted a false certification, that Party may impose remedies as provided by law including terminating this Agreement.

13. Non-Availability of Funds: Every payment obligation of the STATE and FCDMC under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the STATE or FCDMC at the end of the period for which the funds are available. No liability shall accrue to the STATE or FCDMC in the event this provision is exercised, and the STATE and FCDMC shall not be obligated or liable for any future payments as a result of termination under this paragraph.

14. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes §12-1518.

15. All notices or demands upon any Party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17<sup>th</sup> Avenue, Mail Drop 616E  
Phoenix, Arizona 85007  
FAX: 602-712-7424

Flood Control District of Maricopa County  
Chief Engineer and General Manager  
2801 West Durango Street  
Phoenix, Arizona 85009  
FAX: 602-506-8561

16. In accordance with Arizona Revised Statutes §11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

---

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

**FLOOD CONTROL DISTRICT OF MARICOPA COUNTY**

**A Municipal Corporation**


RECOMMENDED BY:

By:  1/25/10  
TIMOTHY S. PHILLIPS, P.E. Date  
Chief Engineer and General Manager


APPROVED AND ACCEPTED:

By:  FEB 10 2010  
Chairman, Board of Directors Date

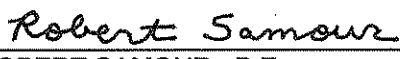
ATTEST:

By:  \_\_\_\_\_  
Clerk of the Board Date

The foregoing Intergovernmental Agreement FCD **2007A005** has been reviewed pursuant to Arizona Revised Statutes 11-952, as amended, by the undersigned General Counsel, who has determined that it is in proper form and within the powers and authority granted to the Flood Control District of Maricopa County under the laws of the State of Arizona.

By:  1/22/10  
General Counsel Date

**ARIZONA DEPARTMENT OF TRANSPORTATION**

By:  3/10/10  
ROBERT SAMOUR, P.E. Date  
Deputy State Engineer, Valley Transportation

Return to Contracts Branch  
Flood Control District of Maricopa County  
2801 W. Durango Street, Phoenix, AZ 85009

**INTERGOVERNMENTAL AGREEMENT**

**FCD 2007A005**

**between**

**THE STATE OF ARIZONA**

**and**

**THE FLOOD CONTROL DISTRICT OF MARICOPA COUNTY**


**for**

**SR 303 L DRAINAGE IMPROVEMENTS**

**Approved by the BOARD OF DIRECTORS  
of the  
Flood Control District of Maricopa County**

**Agenda Item No. C-69-10-**

**Date \_\_\_\_\_**

<p>TERRY GODDARD Attorney General</p>	<p> <b>OFFICE OF THE ATTORNEY GENERAL</b> STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan Davis@azag.gov</p>
---	--	--

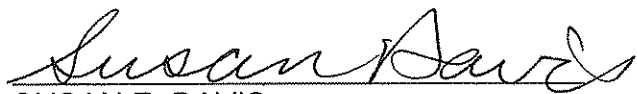
**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. P0012009004516 (**IGA/JPA 07-155**), an Agreement between public agencies, i.e., The State of Arizona and The Flood Control District of Maricopa County, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: March 15, 2010

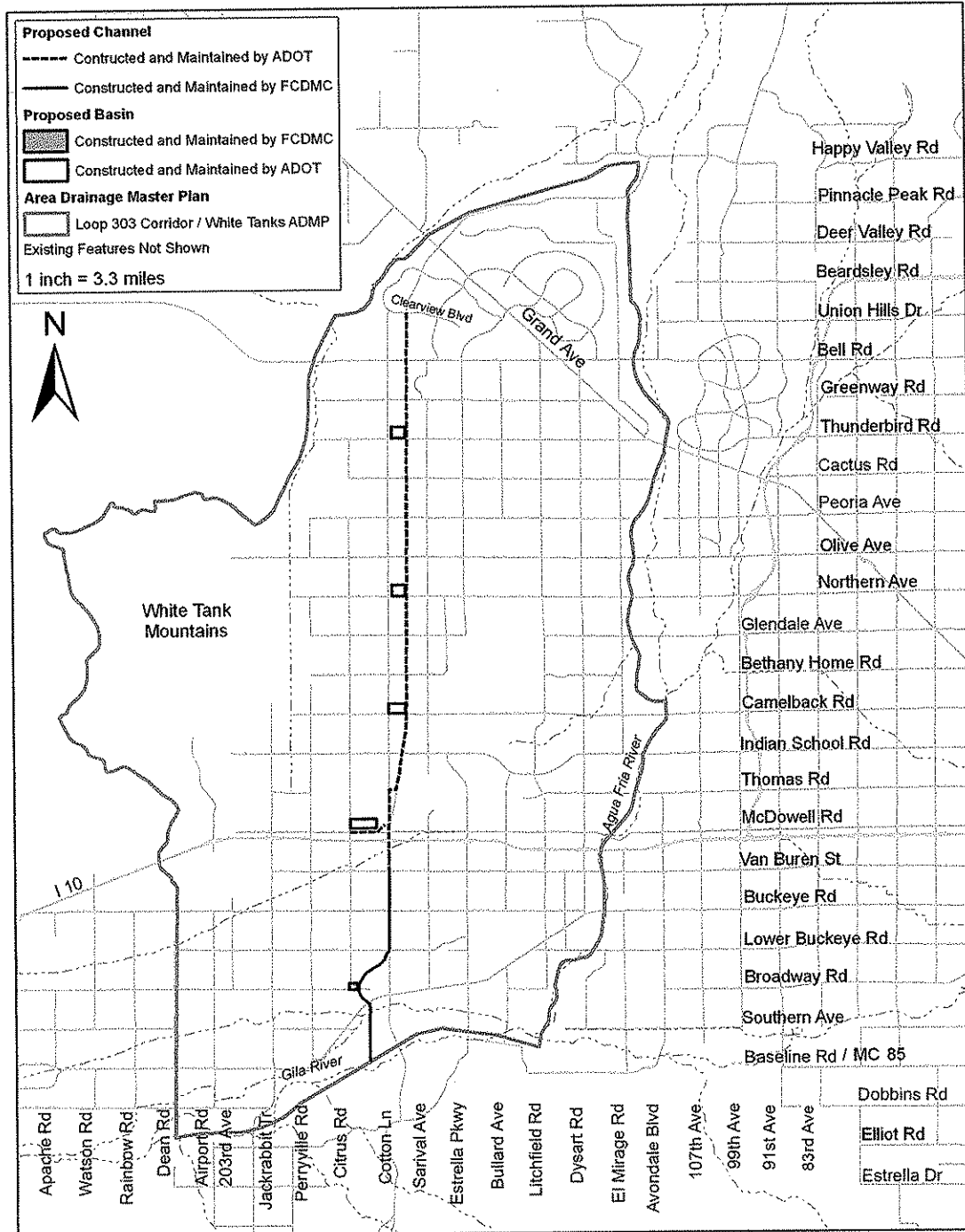
TERRY GODDARD  
Attorney General

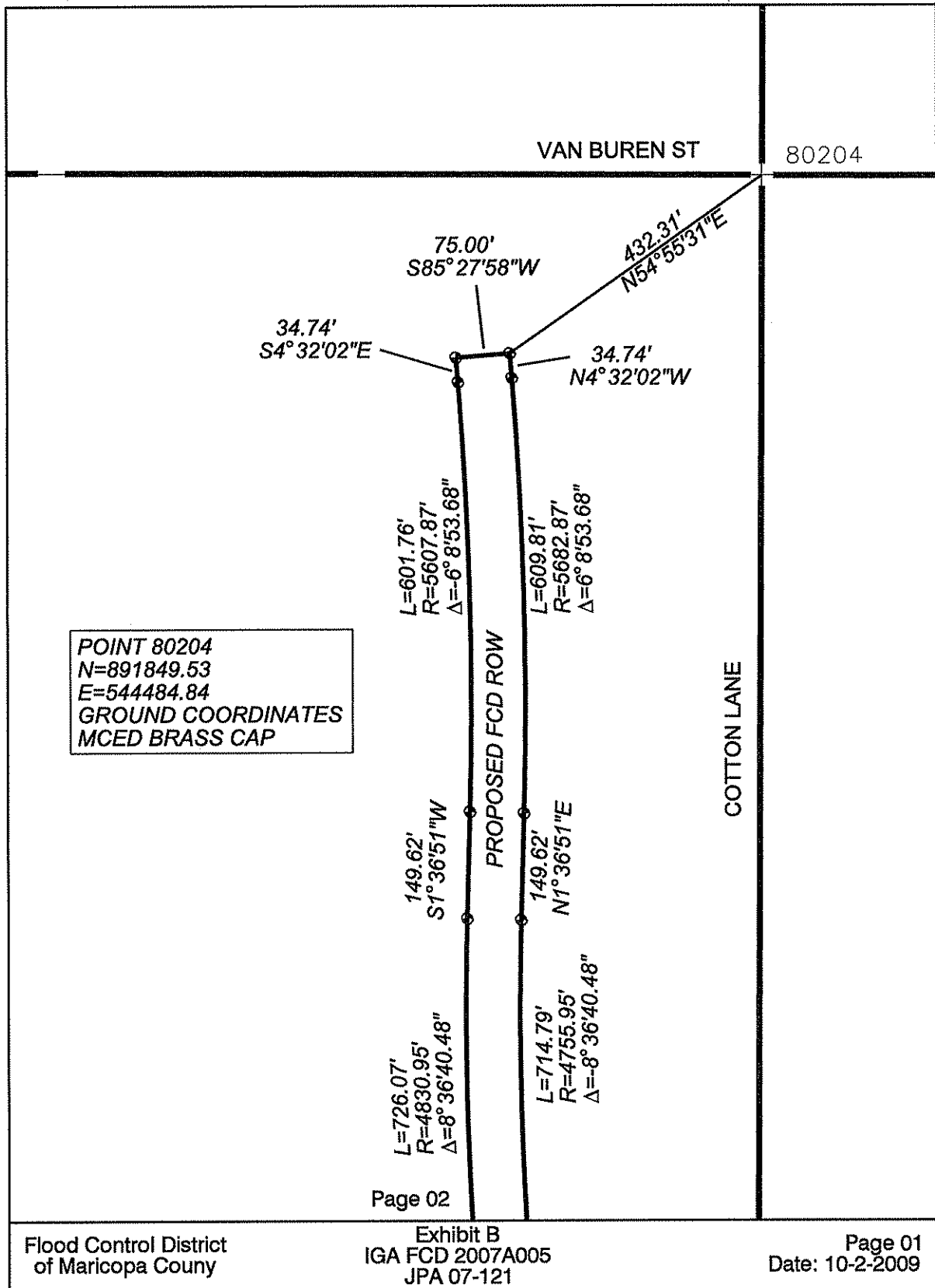
  
SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

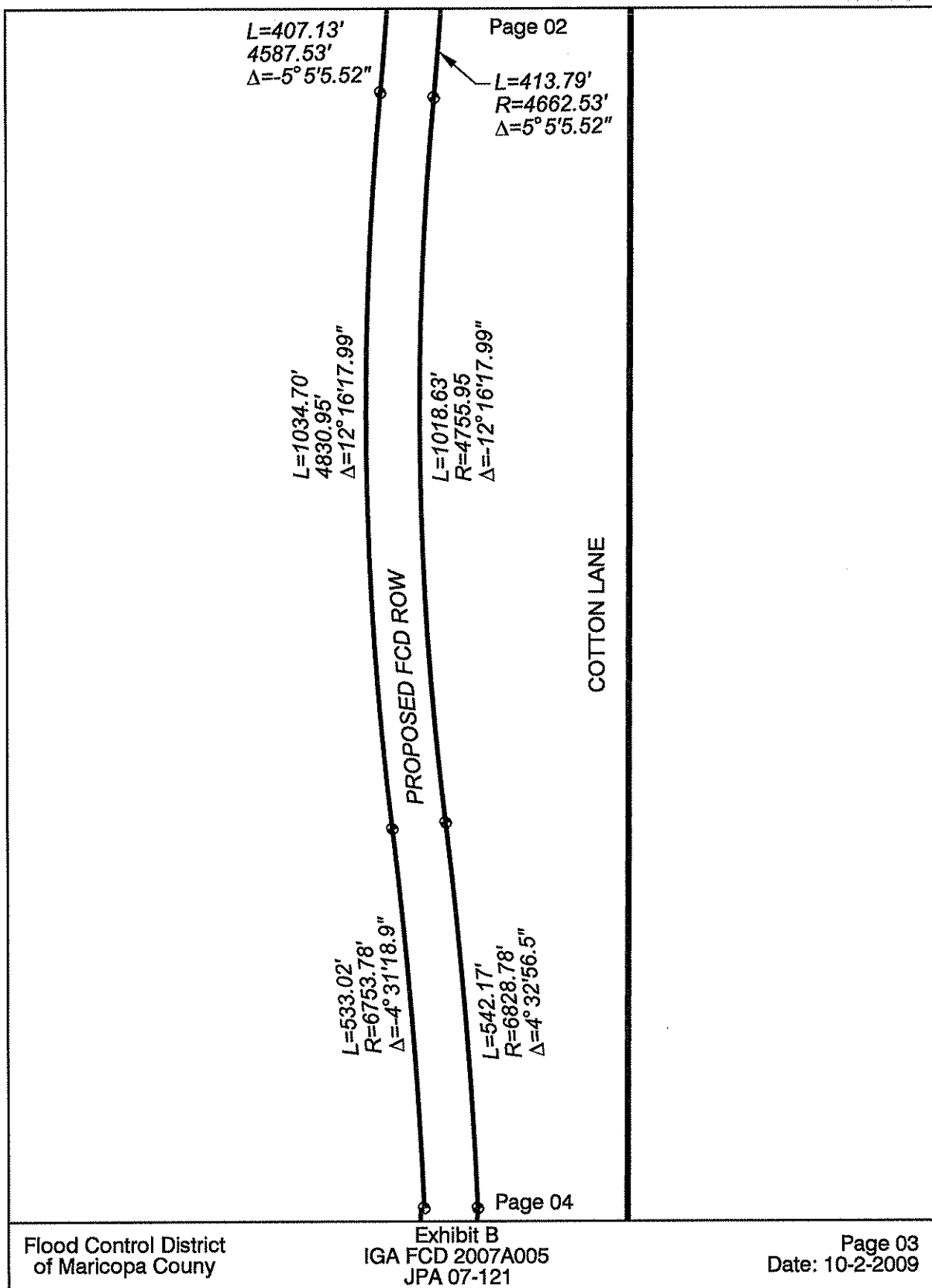
SED:ln:#752938  
Attachment

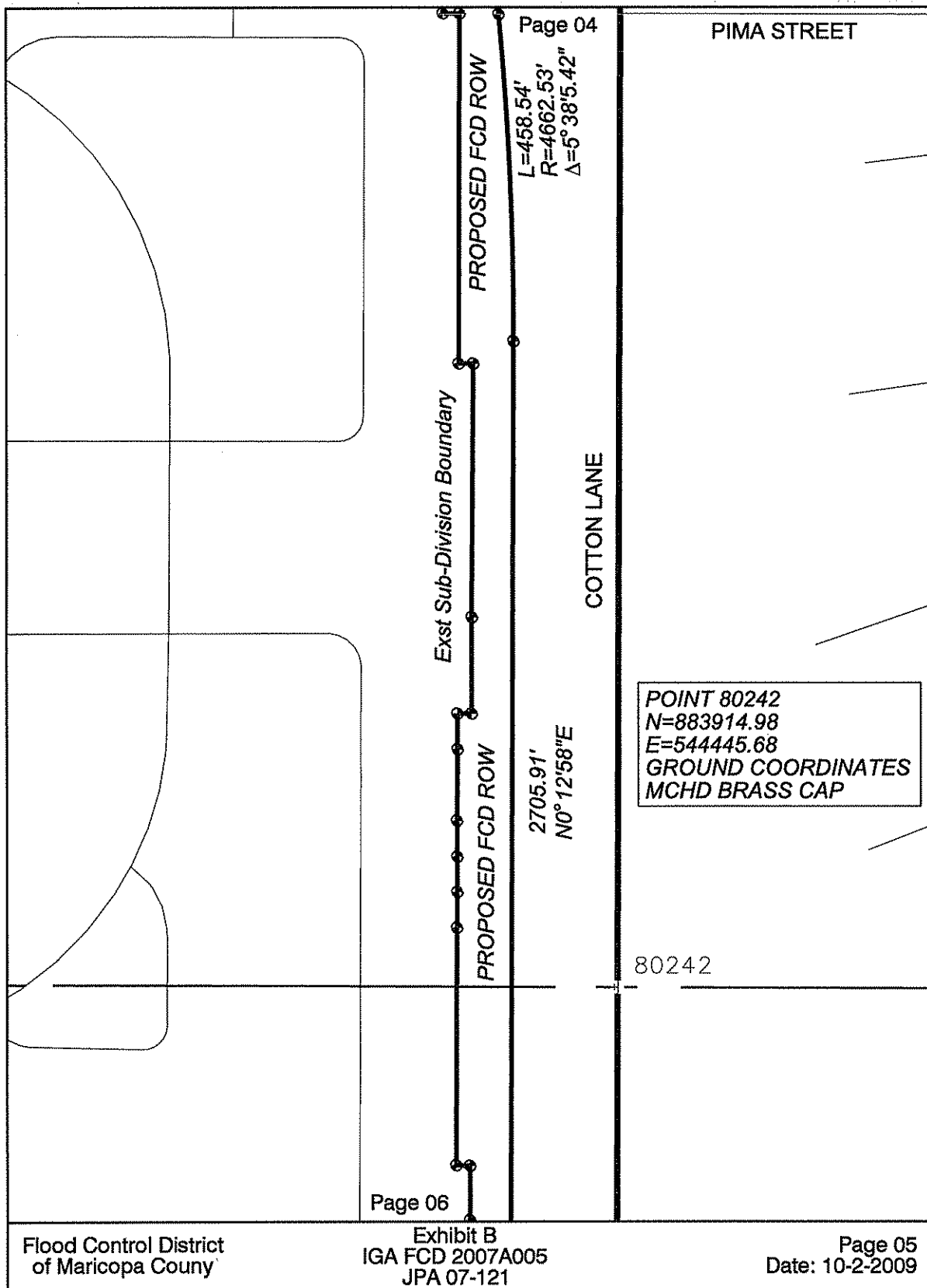


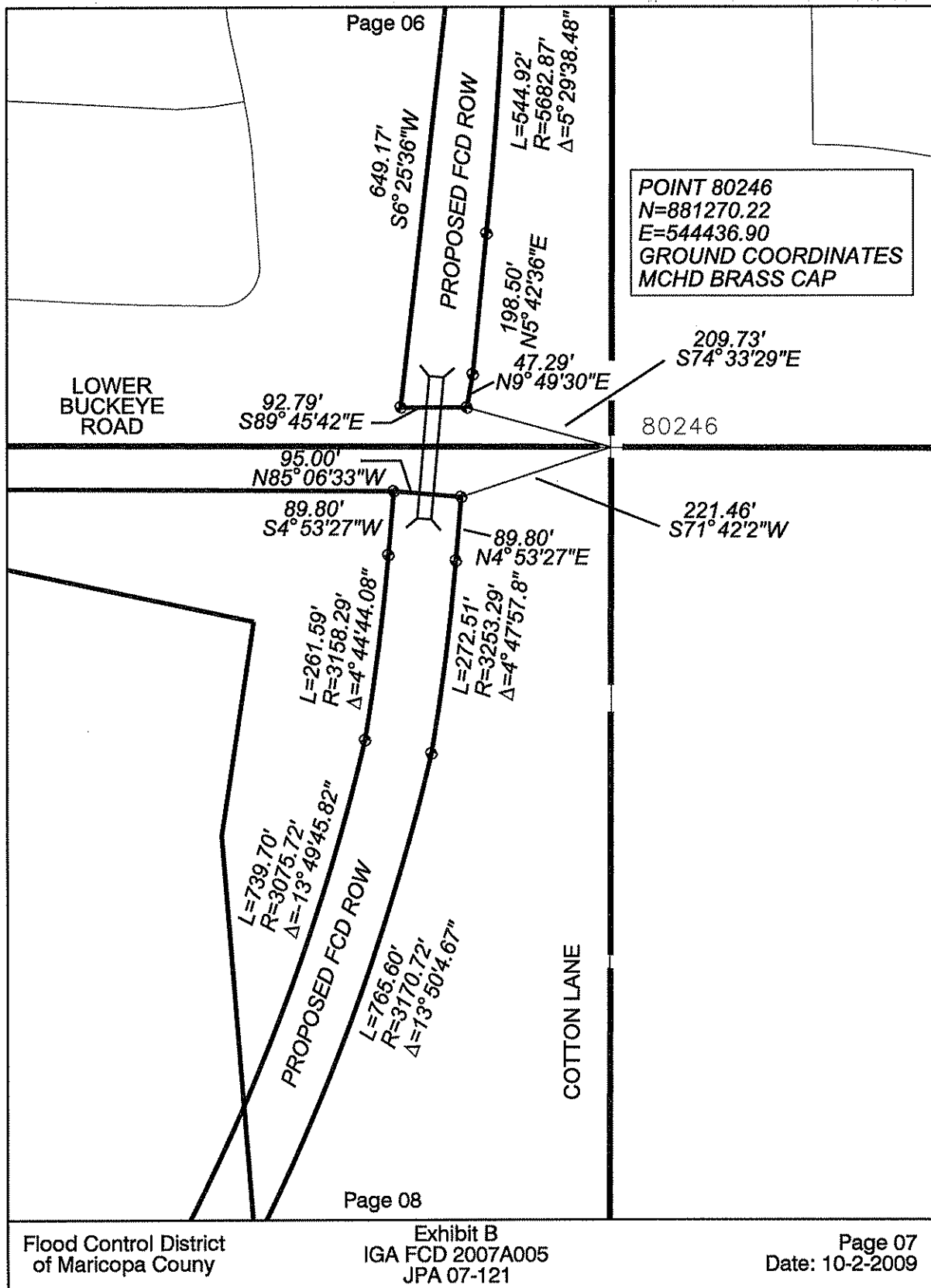
**Exhibit "A"**  
**IGA FCDMC 2007A005**  
**JPA 07-155**

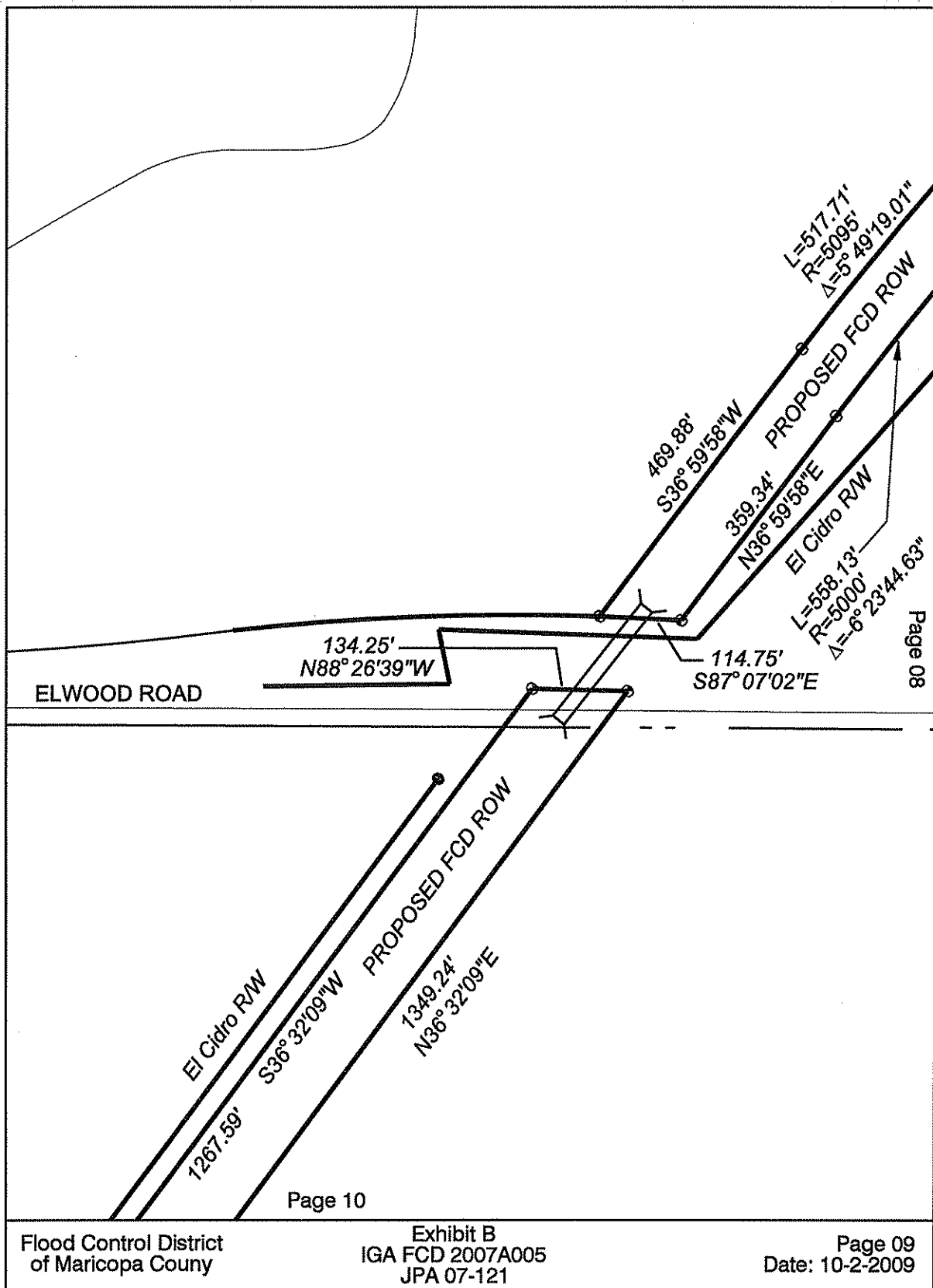


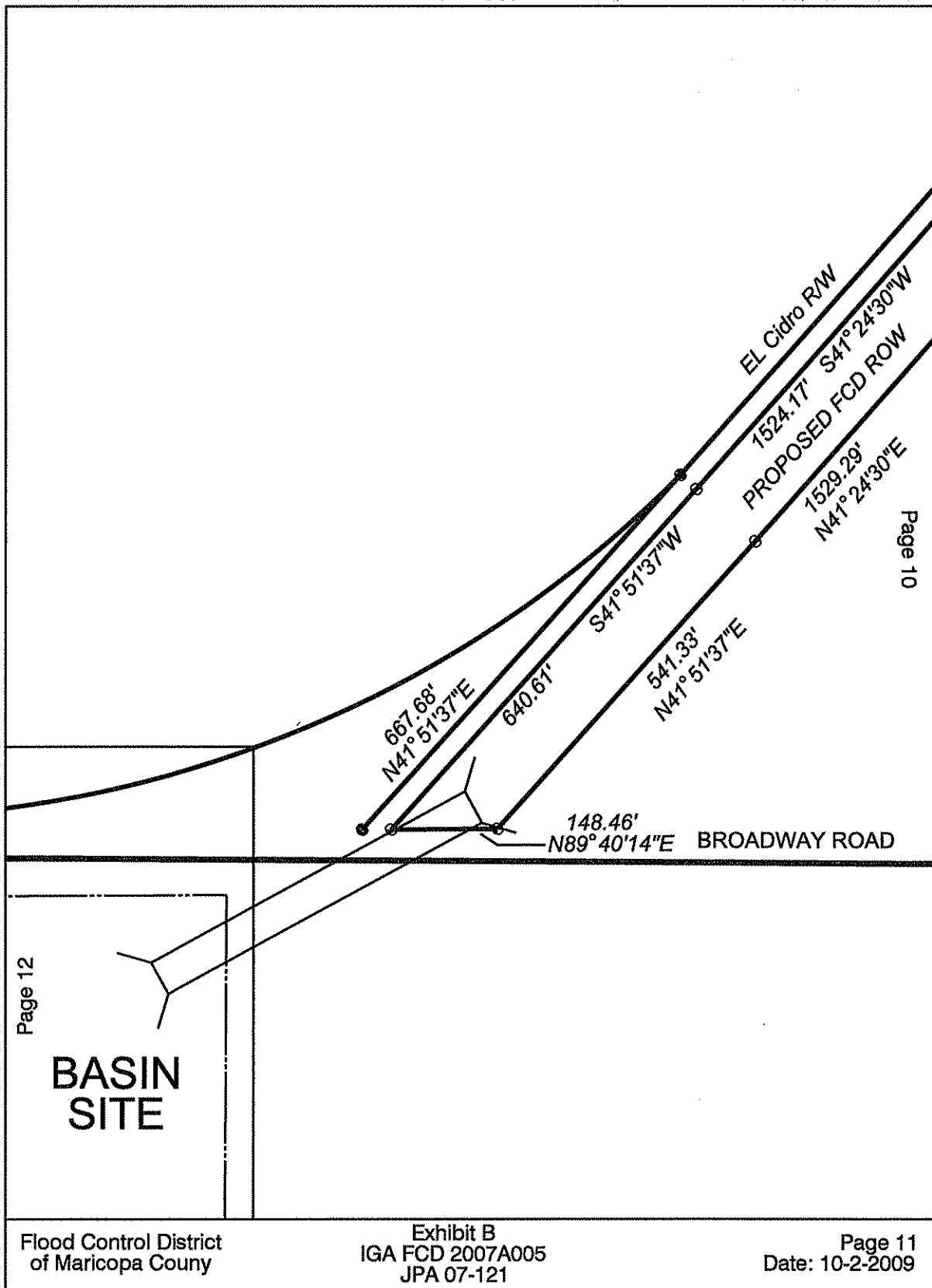












Page 12

**BASIN  
SITE**

Flood Control District  
of Maricopa County

Exhibit B  
IGA FCD 2007A005  
JPA 07-121

Page 11  
Date: 10-2-2009

CITRUS ROAD

FUTURE CHANNEL ALIGNMENT

Page 14

80283

COUNTY ROUTE 85



Page 14

FUTURE CHANNEL ALIGNMENT

Page 16

FUTURE  
CHANNEL  
ALIGNMENT

GILA RIVER

85039

35